

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA)	
)	Criminal No.: 3:00-CR-400-P
v.)	
)	Judge Jorge A. Solis
MARTIN NEWS AGENCY, INC.; and)	
BENNETT T. MARTIN,)	
)	FILED: April 30, 2001
Defendants.)	

RESPONSE AND BRIEF OF THE UNITED STATES
IN OPPOSITION TO MOTION TO DISCLOSE GRANTS OF IMMUNITY

I
INTRODUCTION

Defendants have filed a *Motion to Disclose Grants of Immunity* ("Motion") which asks this Court to require the United States to disclose to the defendants and their counsel: (1) any formal or informal grants of immunity or non-prosecution or leniency given to any person who has testified before any Federal Grand Jury which investigated the transactions which resulted in the return of the indictment in this case, (2) any formal or informal grants of immunity or non-prosecution or leniency given to any person who the government anticipates it will call as a witness in this case, (3) to disclose to the defendants and counsel the specific terms of these grants of immunity and (4) to give to the defendants and counsel any and all documentation related to said grants of immunity. Motion, p. 1.

Defendants either already have the requested information in their possession or, defendants are not entitled to the information. Because the defendants' Motion calls for information that they either already have, or that they are not entitled to, it should be denied.

II LAW AND ARGUMENT

The defendants' request for all grants of immunity and related documents the government has reached with its witnesses is based on their belief that the information has impeachment value. However, the United States understands its obligations under Brady/Giglio and has complied with those obligations, having already provided counsel for defendants with all Brady/Giglio material currently known to the government. On February 12, 2001, the government sent counsel for each defendant a letter which detailed information that might arguably be exculpatory or impeaching.

As the government's February 12, 2001, letter to each defendant informed them, the United States is aware of its continuing disclosure obligations under Brady and Giglio, and will notify the defendants promptly in the event that any further information is determined to fall within Brady or Giglio.

A. THE GOVERNMENT HAS PRODUCED ALL GRANTS OF IMMUNITY TO POTENTIAL GOVERNMENT WITNESSES

Defendants' request for any formal or informal grants of immunity or non-prosecution or leniency given to any person who the government anticipates it will call as a witness in this case should be denied as moot. The United States has already turned over to defendants all immunity orders, informal immunity letters, proffer letters, and plea agreements that are directly or

indirectly relevant to the charged conspiracy.¹

Defendants' request (3) to disclose to the defendants and counsel the specific terms of these grants of immunity should also be denied as moot. Because the government has produced the actual immunity orders, informal immunity letters, proffer letters, and plea agreements (as opposed to simply making the defendants aware of the names of persons who were granted immunity, or testified pursuant to an immunity order, or had entered into a plea agreement with the government), the specific terms of each is already in the defendants' possession.

B. DEFENDANTS ARE NOT ENTITLED
TO INTERNAL GOVERNMENT DOCUMENTS

To the extent that defendants' request (4) for any and all documentation related to said grants of immunity seeks access to internal government documents, defendants clearly are not entitled to those documents. Federal Rule of Criminal Procedure 16(a)(2) protects from disclosure "reports, memoranda, or other internal government documents made by the attorney for the government or any other government agent investigating or prosecuting the case." Any internal documents or memoranda between the prosecutors and their superiors regarding the requested grants of immunity clearly fits within this category and so defendants are not entitled to these documents.

¹ All plea agreements that are directly or indirectly related to the charged conspiracy were produced to the defendants. Although not requested in the Motion, defendants' memorandum in support mentions plea agreements as being necessary to the defense. The government's response to defendants' request for plea agreements is laid out fully in *Response and Brief of the United States in Opposition to Motion to Disclose Plea Agreements*, filed concurrently with this *Response*.

C. DEFENDANTS ARE NOT ENTITLED TO THE IDENTITY OF WITNESSES WHO TESTIFIED BEFORE THE GRAND JURY BUT WILL NOT BE CALLED AS WITNESSES BY THE GOVERNMENT

Defendants' request (1) for any formal or informal grants of immunity or non-prosecution or leniency given to any person who has testified before any Federal Grand Jury which investigated the transactions that resulted in the return of the indictment in this case should be denied because the defendants are not entitled to this information.

1. Rule 6(e) Secrecy Provisions Prohibit The Release Of Names Of Witnesses Who Testified Before The Grand Jury.²

Federal Rule of Criminal Procedure 6(e) provides a prohibition on disclosure of "matters occurring before the grand jury." Fed R. Crim. P. 6(e)(2). Defendants' discovery motion is governed squarely by the secrecy provisions of Rule 6(e) and the clear weight of precedent dictates that their Motion must fail.

The rationale for maintaining grand jury secrecy has been clearly stated by the Supreme Court:

First, if pre-indictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.

Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 219 (1979).

² For a fuller discussion of disclosure of grand jury witnesses, please see *Response and Brief of the United States in Opposition to Motion for Discovery of Names of Grand Jury Witnesses and Witnesses That Will Testify at Trial*, filed concurrently with this response.

The scope of grand jury secrecy is broad and encompasses the disclosure of information which would reveal “the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, and the like.” Fund for Constitutional Government v. National Archives and Records Service, 656 F.2d 856, 869 (D.C. Cir. 1981) (citing SEC v. Dresser Industries, Inc., 628 F.2d 1368, 1382 (D.C. Cir. 1980), cert. denied, 449 U.S. 993 (1980)). Accord, United States v. White Ready-Mix Concrete Co. et al., 509 F. Supp. 747, 750 (N.D. Ohio 1981) (“The weight of authority holds that witnesses’ names are matters occurring before the grand jury”); In re Grand Jury Proceedings, 806 F. Supp. 1176, 1178 (D. Del. 1992).

2. Defendants Cite To No Case Law That Supports Their Request

Defendants are only entitled to impeachment information concerning witnesses who testify against them. There is no general criminal discovery right to learn the identity of witnesses who testified before the grand jury. As the Fifth Circuit stated in United States v. Briggs et al., 514 F.2d 794, 804 (5th Cir. 1975):

One indicted by a grand jury . . . is not entitled to know the identity of the witnesses who testified concerning him, and even after the grand jury has completed receiving evidence, its evidence is unavailable to him. He may not demand a statement of reasons supporting the body's conclusion. The evidence and the witnesses underlying the grand jury's action surface, if at all, at a criminal trial.

If any witness who testified before the grand jury, whether immunized or not, provided Brady material, the United States understands its obligation to disclose that information. As noted above, the United States has already provided counsel for defendants with all Brady/Giglio material currently known to the government.

None of the cases that defendants cite remotely support their request for the identity of grand jury witnesses, whether those witnesses received any formal or informal grant of immunity or non-prosecution or leniency, or not. Perhaps the reason that defendants cited no relevant case law is that their request is clearly contradicted by the prevailing law.

V
CONCLUSION

For the foregoing reasons, the United States respectfully requests the Court to deny defendants' Motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via Federal Express to the Office of the Clerk of Court on this 27th day of April, 2001. In addition, copies of the above-captioned pleading were served upon the defendants via Federal Express on this 27th day of April 2001.

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